



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

NOV 22 2017

Nelson D. Diaz
Republican Party of Miami-Dade County
1460 NW 107 Avenue, Suite P
Doral, FL 33172

RE: MUR 7209

Dear Mr. Diaz:

This is in reference to the complaint you filed with the Federal Election Commission concerning Jose Peixoto for U.S. Congress. Based upon information in the complaint, as well as information provided by the respondents, the Commission, on November 14, 2017, exercised its prosecutorial discretion and dismissed the allegation that Jose Peixoto for U.S. Congress and Luana Catarina Peixoto, in her official capacity as treasurer (the "Committee"), violated 52 U.S.C. § 30104(a) and (b). Also on this date, the Commission reminded the Committee to file disclosure reports or terminate. Accordingly, the Commission closed its file in this matter on November 14, 2017. The Factual and Legal Analysis, which more fully explains the basis for the Commission's decision, is enclosed.

Documents related to the case will be placed on the public record within 30 days. *See* Disclosure of Certain Documents in Enforcement and Other Matters, 81 Fed. Reg. 50,702 (Aug. 2, 2016), effective September 1, 2016.

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. *See* 52 U.S.C. § 30109(a)(8).

If you have any questions, please contact me at (202) 694-1650.

Sincerely,

Lisa J. Stephenson
Acting General Counsel

BY: Jeff S. Jordan
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Jose Peixoto for U.S. Congress MUR 7209
and Luana Catarina Peixoto
as treasurer

I. INTRODUCTION

This matter was generated by a Complaint alleging that Jose Peixoto for U.S. Congress and Luana Catarina Peixoto in her official capacity as treasurer (collectively the "Committee") violated the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations by failing to file disclosure reports with the Federal Election Commission (the "Commission"). The Commission exercised its prosecutorial discretion to dismiss the allegations.

II. FACTUAL AND LEGAL ANALYSIS

The Complaint alleges that Jose Peixoto for U.S. Congress and Luana Catarina Peixoto in her official capacity as treasurer (the "Committee") violated the Act and Commission regulations by failing to file disclosure reports after registering with the Commission as Jose Peixoto's authorized committee on April 14, 2016.¹

Peixoto acknowledges that the Committee filed no disclosure reports, but asserts that since its registration, the Committee never solicited or accepted contributions.² Peixoto also asserts that the Committee made only one disbursement, a check to the Florida Division of

¹ Compl. at 1 (Jan. 13, 2017). Jose Peixoto registered as a candidate for U.S. Representative for Florida's 26th Congressional district the same day. See FEC Form 2, *Statement of Candidacy*, Jose Peixoto (Apr. 14, 2016) and FEC Form 1, *Statement of Organization*, Jose Peixoto for U.S. Congress (Apr. 14, 2016).

² Resp. at 2-3 (Feb. 7, 2017).

1 Elections for a ballot access fee, and says that the check bounced.³ Peixoto explains that he
2 could not deposit funds to make the check good because of a family emergency, and he believed
3 that because he never paid the ballot fee, he was no longer a candidate.⁴ It appears that because
4 Peixoto believed he was no longer a candidate, he also believed his Committee was not required
5 to file reports with the Commission.⁵

6 Within 15 days of becoming a candidate,⁶ the candidate must designate a principal
7 campaign committee by filing a Statement of Candidacy.⁷ The principal campaign committee
8 must file a Statement of Organization within ten days of designation.⁸ The Act and the
9 Commission's regulations require each treasurer of a political committee to file reports of
10 receipts and disbursements.⁹ In any year where there is a regularly scheduled election for which
11 a candidate is seeking election, the principal campaign committee of a candidate for the House of
12 Representatives shall file, *inter alia*, quarterly reports no later than the 15th day after the final

³ *Id.* Peixoto does not state the date the payment was made, or the amount of the check. However, Florida's ballot access fee for a 2016 Independent candidate for U.S. Representative was \$6,960, which should have been received by the Division of Elections no later than June 24, 2016. 2016 Federal Qualifying Handbook, Florida Division of Elections, p. 11, <http://dos.myflorida.com/media/695459/federal-qualifying-handbook.pdf> (Jan. 27, 2016).

⁴ Resp. at 3-4. Peixoto was on Florida's 2016 ballot and received 5.9% of the vote.

⁵ *Id.*

⁶ 52 U.S.C. § 30101(2); 11 C.F.R. § 100.3(a). Ballot access fees count toward the \$5,000 expenditure threshold for candidate status under 52 U.S.C. § 30101(2). See Factual and Legal Analysis at note 2, MUR 6513/Pre-MUR 517 (Cynthia Rodriguez Matthews); Gen. Counsel's Rpt. at 4, MURs 6374 and 6408 (Roly Arrojo for Congress); Factual and Legal Analysis at 5, MUR 6315 (Alvin M. Greene).

⁷ 52 U.S.C. § 30102(e)(1); 11 C.F.R. § 101.1(a).

⁸ 52 U.S.C. § 30103(a), (c).

⁹ 52 U.S.C. § 30104(a) and (b); 11 C.F.R. §§ 104.1, 104.3(a) and (b).

1 day of a calendar quarter.¹⁰ The first report filed by a committee shall include all disbursements
2 made prior to becoming a political committee.¹¹

3 Peixoto became a candidate when the Committee made a \$6,960 payment to the Florida
4 Division of Elections for ballot access.¹² The payment of the ballot access fee also triggered
5 reporting requirements for the Committee, which should have filed a 2016 July Quarterly Report
6 that disclosed the payment, and the subsequent correction after the Committee's check
7 bounced.¹³ Nevertheless, the Committee asserts that it made no disbursements other than the
8 ballot access fee and received no contributions. Therefore, given the small amount of activity,
9 and in furtherance of the Commission's priorities, relative to other matters pending on the
10 Enforcement docket, the Commission exercised its prosecutorial discretion to dismiss the
11 allegation that Jose Peixoto for U.S. Congress and Luana Catarina Peixoto in her official
12 capacity as treasurer violated 52 U.S.C. § 30104(a) and (b).¹⁴ The Commission also reminds the
13 Committee to work with the Reports Analysis Division to begin filing its disclosure reports or to
14 terminate.

¹⁰ *Id.*

¹¹ 11 C.F.R. § 104.3(b)(2), (4).

¹² *See* Note 7.

¹³ The Commission's Reports Analysis Division indicates that any payment is to be reported as a disbursement on the day it is made, and that upon learning of insufficient funds a committee would be expected to create a negative entry to correct the record. It is also possible that when the Committee check bounced, the Committee accrued debt that was not reported. We do not know if the Florida Division of Elections is attempting to collect the fee. *See* 11 C.F.R. § 104.3(d) (Disclosure reports filed with the Commission shall also disclose the amount and nature of outstanding debts and obligations).

¹⁴ *See Hecker v. Chaney*, 470 U.S. 821 (1985).